IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.13575 of 1995

Between:

Marine Fishermen Co-Op. Society Ltd., Rep. President Sri Singirimalli Sathi Raju, S/o. Musalayya. R/o. Ramanapalem,
Kothapalli, East Godavari.

...PETITIONER

AND

1. The Assistant Director of Fisheries, Kakinada, East Godavari District.
2. The Mandal Revenue Officer, Kothapalli (Uppada) Mandal, East Godavari District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents in granting any leases to 3rd parties out of the land in Sy.Nos.78, 81, 100/2, 103/1, 103/4, 104, 105, 116/2, 118, 119/3 and 120/2 of Amaravilli Village, Kothapalli (Uppada) Mandal, East Godavari District, as illegal, null and void and for a consequential order directing the respondents to lease-out the aforesaid land to the petitioner-society.

Counsel for the Petitioner: MR.M.V.SURESH

Counsel for the Respondents: None appeared for GP FOR REVENUE

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.13575 of 1995

ORDER:

Heard Sri M.V.Suresh, the learned counsel for the petitioner-Cooperative Society. No Government Pleader appears on behalf of the respondents in spite of filing of the counter-affidavit.

The petitioner herein, who claims to be the Marine Fishermen Cooperative Society, filed this Writ petition, *inter alia*, seeking a writ of mandamus for considering its case by way of allotment of lease in regard to the lands situated in Survey Nos.75, 81, 100/2, 103/1, 103/4, 104, 105, 116/2, 118, 119/3 and 120/2 of Amaravilli Village in Kothapalli (Uppada) Mandal of East Godavari District.

The case of the petitioner is that having regard to their revocation and especially, the scheme as enunciated by the Government in G.O.Ms.No.6, Animal Husbandry and Fisheries (FishII) Department, dated 06.01.1994, it is entitled for allotment of the land to the extent of 60% ratio along with others who were also been provided different ratios. Though such land is available, the respondents are proceeding to allot the very same land in favour of some other persons who are trying to encroach the same. Hence, the Writ Petition.

In the counter-affidavit filed on behalf of the respondents herein, the allegation that there is induction of the third parties as such is denied. Further, it is also stated that approximately Acs.12.00 of land was already in the possession of the petitioner but the society having been registered only on 04.10.1994, was not in existence at the time of conducting Grama Sabhas under Land lease Policy and therefore, prayed to dismiss the Writ Petition.

Considering the submissions made and on perusal of the material available on record, the only question that arises for consideration is as to whether the petitioner-Cooperative Society is entitled to make any claim for allotting any lease of the said land.

There is no dispute of the fact that the petitioner-Cooperative Society is a registered Society and it was formed only on 04.10.1994. However, it was pointed out in the counter-affidavit that the concerned authorities including Grama Sabhas have already taken up the issue under its policy and at which time, the petitioner-Cooperative Society was not in existence. Curiously, the petitioner, without making any approach before the respondents or the competent authorities, directly approached this Court seeking such allotment. It is too late to accept that this Court can interdict the exercise of powers under Article 226 of the Constitution of India and grant relief without any such approach being made by the petitioner. The entire basis for the exercise of the powers for issuance of any writ of mandamus is based upon the demand and the refusal. In this case, there being no such demand, the question of refusal does not arise. In the circumstances, I do not find any merits in the Writ Petition.

The Writ Petition is accordingly dismissed. It shall be open to the petitioner to approach the respondents or the concerned authorities seeking for such relief which can be considered independently and on merits.

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(B.PRAKASH RAO, J)

17th February 2005

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Assistant Director of Fisheries, Kakinada, East Godavari District.

2. The Mandal Revenue Officer, Kothapalli (Uppada) Mandal, East Godavari District.

3. Two CCs to G.P. for Revenue, High court Buildings, Hyderabad (OUT).

4. Two CD copies.